

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

COBE CARDIOVASCULAR, INC. and  
SORIN GROUP DEUTSCHLAND GMBH,

Plaintiffs,

v.

TERUMO CARDIOVASCULAR  
SYSTEMS CORP.,

Defendant.

C.A. No. 05-410 (JJF)

**DEMAND FOR JURY TRIAL**

**DEFENDANT’S ANSWER TO THE COMPLAINT**

In response to the Complaint filed by Plaintiffs Cobe Cardiovascular, Inc. (“Cobe”) and Sorin Group Deutschland GmbH (“Sorin”), Defendant Terumo Cardiovascular Systems Corp. (“Terumo”) alleges as follows:

Defendant denies each and every allegation contained in the Complaint that is not expressly admitted below. Any factual allegation admitted below is admitted only as to the specific admitted facts, not as to any purported conclusions, characterizations, implications, or speculations that arguably follow from the admitted facts. Defendant denies that Plaintiffs are entitled to the relief requested or any other relief.

**PARTIES**

1. On information and belief, Defendant admits the allegation in paragraph 1 of the Complaint.
2. On information and belief, Defendant admits the allegation in paragraph 2 of the Complaint.
3. Defendant admits the allegation in paragraph 3 of the Complaint.

### **JURISDICTION AND VENUE**

4. In response to paragraph 4 of the Complaint, Defendant admits that the Complaint purports to state a claim for patent infringement arising under 35 U.S.C. § 1, et seq. Defendant specifically denies that Plaintiffs' claim has any basis, as Defendant has not made, used, sold, offered for sale, or imported any product that infringes any valid claim of the '907 patent.

5. Defendant admits the allegation in paragraph 5 of the Complaint.

6. Defendant admits the allegation in paragraph 6 of the Complaint.

7. Defendant admits the allegation in paragraph 7 of the Complaint.

### **PATENT-IN-SUIT**

8. Defendant admits that the United States Patent and Trademark Office issued United States Patent No. 5,499,907 ("the '907 patent") on March 19, 1996 and that this patent was attached as Exhibit A to the Complaint. Defendant is without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' averments regarding ownership, assignment, or licensing of the '907 patent. On information and belief, Defendant denies the remaining allegations of paragraph 8.

### **CLAIM FOR RELIEF FOR PATENT INFRINGEMENT**

9. Defendant realleges and incorporates by reference paragraph 1-8 as if fully stated herein.

10. Defendant denies the allegation in paragraph 10 of the Complaint.

11. Defendant denies the allegation in paragraph 11 of the Complaint.

12. Upon information and belief, Defendant denies the allegation in paragraph 12 of the Complaint.

13. Defendant denies the allegation in paragraph 13 of the Complaint.

14. In response to Plaintiffs' Prayer for Relief, Defendant denies that Plaintiffs are entitled to any relief whatsoever from Defendant, either as requested in the Prayer for Relief or otherwise.

### **AFFIRMATIVE DEFENSES**

In addition to the affirmative defenses described below, Defendant specifically reserves the right to allege additional affirmative defenses as they become known through the course of discovery.

15. Defendant does not make, use, sell, import, or offer for sale, in the United States any product which infringes any valid claim of the '907 patent either directly or indirectly, contributorily or otherwise, and has not induced any others to infringe any valid claim of the '907 patent.

16. The claims of the '907 patent are invalid because they fail to comply with one or more provisions of 35 U.S.C. §§ 101, 102, 103, and/or 112.

17. Upon information and belief, Plaintiffs' patent infringement allegations as filed are barred, in whole or in part, by express or implied licenses pursuant to the Settlement Agreement entered between Cobe and Terumo on May 27, 1997.

18. Plaintiffs' patent infringement allegations are barred, in whole or in part, by laches.

19. Upon information and belief, Plaintiffs are precluded from recovering damages for any alleged infringement for the time period before Defendant was specifically notified of the alleged infringement pursuant to 35 U.S.C. § 287.

**PRAYER FOR RELIEF**

WHEREFORE, Defendant Terumo respectfully requests the following relief:

- A. This Court dismiss this Complaint with prejudice;
- B. This Court enter judgment that Terumo has not infringed, induced the infringement or contributed to infringement of U.S. Patent No. 5,499,907;
- C. This Court enter judgment that U.S. Patent No. 5,499,907 is invalid;
- D. Reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- E. Costs and expenses; and
- F. Such other and further relief as this Court deems proper.

Dated: August 8, 2005

FISH & RICHARDSON P.C.

By: */s/ William J. Marsden, Jr.*

---

William J. Marsden, Jr. (#2247)  
FISH & RICHARDSON P.C.  
919 North Market Street, Suite 1100  
Wilmington, DE 19801  
(302) 652-5070

Mathias W. Samuel  
Ann Cathcart Chaplin  
Courtney Nelson Wills  
FISH & RICHARDSON P.C., P.A.  
60 South Sixth Street, Suite 3300  
Minneapolis, MN 55402  
(612) 335-5070

Attorneys for Defendant  
TERUMO CARDIOVASCULAR SYSTEMS  
CORP.

**CERTIFICATE OF SERVICE**

I hereby certify that on August 8, 2005, I electronically filed **DEFENDANT'S ANSWER TO THE COMPLAINT** with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

Jack B. Blumenfeld, Esq.  
Maryellen Noreika, Esq.  
Morris, Nichols, Arsht & Tunnell  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899-1347

Attorneys for Plaintiffs  
Cobe Cardiovascular, Inc. and Sorin  
Group Deutschland GMBH

I hereby certify that on August 8, 2005, I have mailed by United States Postal Service, the document(s) to the following non-registered participants:

David J.F. Gross, Esq.  
James Poradek, Esq.  
Julie Knox Chosy, Esq.  
Faegre & Benson LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901

Attorneys for Plaintiffs  
Cobe Cardiovascular, Inc. and Sorin  
Group Deutschland GMBH

/s/ William J. Marsden, Jr.

William J. Marsden, Jr.